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Report of the Bureau on the Budget sub-topics of Budget Management Oversight and Premises

1. This report is submitted by the facilitator for the budget, Ambassador Per Holmström (Sweden), pursuant to the mandate given by the Bureau to the focal points for the sub-topics of budget management oversight and premises (Ambassador Eduardo Rodríguez Veltzé (Bolivia), and Ambassador Willys Delvalle (Panama), respectively) within the Hague Working Group facilitation for the budget.¹
2. The focal points have prepared reports on their activities during 2017. These reports appear as annex I and annex II to this report.

¹ Bureau decision of 16 February 2017.

Annex I

Report of the focal point for the topic of Budget Management Oversight

A. Introduction and background

3. In the omnibus resolution adopted at its fifteenth session,¹ the Assembly of States Parties set out the mandate for 2017 on the topic of strategic planning:

With regard to strategic planning, [the Assembly]

(a) *recommends* that the Bureau, given the existence of numerous topic overlaps amongst facilitation groups, take action in order to optimize or subsume tasks, including complementary assessments by installed audit capacities as well as those by the Independent Oversight Mechanism in accordance with its mandate;

(b) *recalls* its invitation to the Court to hold annual consultations with the Bureau in the first trimester on the implementation of its strategic plans during the previous calendar year, with a view to improving performance indicators;

(c) *also recalls* its invitation to the Office of the Prosecutor to inform the Bureau on the implementation of its Strategic Plan for 2016-2018; and

(d) *requests* the Bureau to continue to engage in a dialogue with the Court on the development of a comprehensive risk-management strategy and to report thereon to the sixteenth session of the Assembly.

4. On 20 December 2016, the Bureau approved the allocation of items between its Hague and New York Working Groups, including the allocation of strategic planning to the Hague Working Group (“the Working Group”) as an element of the budget facilitation.

5. On 16 February 2017, the Bureau appointed Ambassador Eduardo Rodríguez (Bolivia) as focal point for the topic of “budget management oversight”, a title which was intended to reflect the full scope of the subject matter to be considered in 2017. The key issues for which the focal point was to be responsible can be drawn from the 2016 report on the strategic planning process of the International Criminal Court (“the Court”):²

(a) Optimization of budget management oversight

(b) Updates on the strategic planning process

(c) Development of a comprehensive risk management strategy

6. It was subsequently decided that the topic would also incorporate the issue of legal aid, drawing on the relevant Assembly resolutions (ICC-ASP/12/Res.8, annex 1, para. 6; ICC-ASP/13/Res.5, annex I, para. 5; and ICC-ASP/15/Res. 5, annex I, para. 8).

7. The focal point’s objectives for 2017 were to identify the key aspects of budget management oversight which States Parties may wish to consider, to seek to have a holistic overview of the different subsidiary bodies of the Assembly and others that can assist in such oversight, and to facilitate an exchange of views among States Parties on how to approach the issue. As regards risk management, the focal point intended to provide a forum for consideration of the development of a comprehensive risk management strategy, bearing in mind the work being undertaken by the subsidiary bodies of the Assembly on the topic. The focal point also intended to provide a forum for any updates on the reform of legal aid in advance of the sixteenth session of the Assembly.

¹ ICC-ASP/15/20.

² ICC-ASP/15/29.

B. Meetings and discussions

8. Two consultations on the topic of budget management oversight were held in 2017, on 5 September and 2 November. The Court was invited to be present at both meetings. In addition, the focal point held informal meetings with representatives of the various subsidiary bodies of the Assembly responsible for different aspects of budget management oversight.

9. The meeting on 5 September was convened by the focal point in order for the Working Group to hear from each of the subsidiary bodies. The Working Group received presentations from representatives of: the Audit Committee; the Committee on Budget and Finance; the External Auditor; the Independent Oversight Mechanism; and the Office of Internal Audit. These representatives briefed the participants on their respective mandates, the nature of their work, and any means of coordination between them.

10. The focal point noted that the meeting was an opportunity for States Parties to learn what each of the various bodies did, and how States Parties could approach them regarding questions of budget management oversight. The focal point noted that the bodies were all established by the Assembly of States Parties, and that States Parties must cover the costs of their operations. The focal point informed States Parties that the combined cost of the different bodies in 2017 alone was approximately €2 million.³

11. During this meeting States Parties had the opportunity to pose questions to the representatives of the different bodies regarding their mandates and their current work.

1. Strategic planning and risk management

12. The omnibus resolution adopted at the fifteenth session of the Assembly envisaged a dialogue with the Court on its strategic planning processes, including its risk management strategy. In this regard the focal point noted that the topic of risk management was considered by both the Audit Committee and the Committee on Budget and Finance (“the Committee”) in 2017, leading to the inclusion of the following paragraphs in the report of the Committee’s twenty-ninth session:⁴

195. With regard to risk management, the [Audit Committee] noted with satisfaction that risk management had been identified as one of the priority areas of the Court in 2017. Furthermore, the [Audit Committee] noted that the Administrative Instruction on risk management was promulgated on 31 March 2017, the Risk Management Committee (“RMC”) was established, the terms of reference for the RMC were under preparation and, upon request of the [Office of the Prosecutor (OTP)], the [Office of Internal Audit] conducted training sessions on risk management for some of the OTP staff. The [Audit Committee] issued five new recommendations concerning risk management.

196. The Committee welcomed the progress made by the Court in managing its risks and recommended that the Assembly approve all of the recommendations made in this regard by the AC. With respect to the role of the Court-wide risk coordinator, the Committee noted that this function would be handled, for the time being, by a staff member within the Office of the Director of the Division of Management Services, in addition to his other responsibilities, and resolved to come back to this matter in the context of its human resource policy review. Moreover, the Committee was of the view that, in light of the financial implications, risk management should be embedded in the Court’s managerial responsibilities.

³ This figure is comprised of the following:
 €62,800 (approved 2017 budget for the Committee on Budget and Finance and the Audit Committee, sub-programme 4500 of Major Programme IV);
 €07,000 (2017 fee charged by the External Auditor, as of 31 October 2017);
 €14,800 (approved 2017 budget for the Independent Oversight Mechanism); and
 €694,200 (approved 2017 budget for the Office of Internal Audit)
 Total: €2,078,800.

⁴ ICC-ASP/16/15, paras. 195 and 196.

13. The focal point noted that the Court intended to extend the current Strategic Plan to 2018, and to prepare a new Strategic Plan in 2018, for the period 2019-2021.⁵

2. Legal aid

14. The omnibus resolution adopted at the fifteenth session of the Assembly requested that the Court reassess the functioning of the legal aid system and present, as appropriate, proposals for adjustments to the remuneration policy for the consideration of the Assembly at its sixteenth session.

15. The topic of legal aid was considered by the Committee on Budget and Finance, resulting in the inclusion of the following paragraph in the Executive Summary of the report of its twenty-ninth session:⁶

11. In the absence of substantive information on the envisaged *reform of the legal aid system*, the Committee was only in a position to recommend that the proposed new system be more respectful of the budgetary limits approved by the Assembly. The Committee looked forward to specific proposals for an in-depth financial assessment at its forthcoming sessions. Without pre-empting the discussion, the Committee recommended that the Court make every effort to present a reform that aims at limiting the administrative burden without compromising accountability and that can be achieved within existing resources.

16. On 2 November 2017 the focal point convened a meeting in order for the Court to provide States Parties with an update on the work in this area. In advance of this meeting the Registry presented a report on the progress of the development of proposals for adjustments to the legal aid remuneration system as of 2019.⁷

17. States Parties expressed their appreciation for the update from the Registry and looked forward to receiving further details. It was noted that the Committee on Budget and Finance would consider the issue during 2018 with a view to the Assembly taking a decision at its seventeenth session. Some States Parties emphasized the need for any proposals to be presented early in the first trimester of 2018 to allow States Parties sufficient time for a full and thorough consideration of the proposal. Some States Parties also underlined the importance of any proposals being in line with the recommendations of the Committee on Budget and Finance.⁸

C. Recommendations

18. The focal point, through the Bureau, submits the proposed language contained in the appendix to this report for the consideration of the Assembly. This language is proposed for insertion in the budget and omnibus resolutions.

⁵ This would align the timing of the Court's Strategic Plan and the OTP Strategic Plan.

⁶ ICC-ASP/16/15, para. 11.

⁷ Updated report of the Court on the progress of the development of proposals for adjustments to the legal aid remuneration system as of 2019 (ICC-ASP/16/32).

⁸ See paragraph 15 above.

Appendix

Proposed resolution language for 2017

A. To be inserted into the budget resolution

Budget Management Oversight

1. *Notes* that the strategic plans of the Court and the Office of the Prosecutor are dynamic and updated on a regular basis;
2. *Notes* the intention of the Court to extend its current Strategic Plan to 2018, and to prepare a new Strategic Plan in 2018, for the period 2019-2021;
3. *Reiterates* the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach;
4. *Recalls* its invitation to the Court to hold annual consultations with the Bureau in the first trimester on the implementation of its strategic plans during the previous calendar year, with a view to improving performance indicators;
5. *Also recalls* its invitation to the Office of the Prosecutor to inform the Bureau on the implementation of its Strategic Plan for 2016-2018; and
6. *Requests* the Bureau to continue to engage in a dialogue with the Court on the development of a comprehensive risk-management strategy and to report thereon to the seventeenth session of the Assembly;
7. *Welcomes* the presentations made to States Parties by representatives of the Audit Committee, the Committee on Budget and Finance, the External Auditor, the Independent Oversight Mechanism, and the Office of Internal Audit, providing information on their respective mandates and means of coordination between them;
8. *Recommends* these subsidiary bodies to expand their coordination in order to improve the timely exchange of information and report results amongst them, the organs of the Court, the Bureau, and the Assembly, to optimize their oversight capacities;

B. To be retained in the omnibus resolution:

K. Legal aid

64. *Acknowledges* the Court's efforts to continue implementing the legal aid remuneration policy and *stresses* the need for continuous monitoring of the efficiency of the legal aid system to uphold and strengthen the principles of the legal aid system, namely fair trial, objectivity, transparency, economy, continuity and flexibility;¹

64bis. *Takes note* of the information provided by the Registrar and the recommendations made by the Committee on Budget and Finance regarding this matter;²

Mandates annex

8. With regard to **Legal Aid**, *requests* the Court to continue its review of the functioning of the legal aid system and to present, in early 2018, as appropriate, and without pre-empting the discussion, proposals for adjustments within existing resources to the legal aid remuneration policy for the consideration of the Assembly, through the Committee on Budget and Finance, at its seventeenth session;

¹ ICC-ASP/3/16, para. 16.

² ICC-ASP/16/15, paras. 11, 176-183.

Annex II

Report of the focal point for the topic of premises

1. The Bureau appointed Ambassador Willys Delvalle (Panama) as focal point for the topic of premises on 16 February 2017.
2. The specific mandate for the topic of premises for the year 2017, derives from Section B, paragraphs 6 and 7 of annex II of resolution ICC-ASP/15/Res.2, which recommended that the Bureau be entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget or, if necessary, a subcommittee thereof.
3. In 2017, The Hague Working Group (“the working group”) held a total of two consultations on premises (5 July and 17 October). The Court was invited to be present at all meetings.

A. Meetings and discussions

1. Long-term maintenance and capital replacements

4. During the meetings, States were provided with background information regarding long-term maintenance and capital replacements and in particular the three alternatives suggested by the Oversight Committee in 2015 to address the cost impact of capital replacement.¹
5. Some States Parties were of the view that the establishment of a fund with a limited scope could be a viable option and should be considered further, while according to a different view no special structures should be created, with the regular budget process also including long-term maintenance and replacement.
6. Delegations agreed that this discussion should continue in 2018 during the facilitation on the budget.
7. States were also informed that the selection of the new main contractor, who would be in charge of long-term maintenance, was underway and should start on 1 April 2018.² The scrutiny of the Committee on Budget and Finance on that matter was welcomed, as well as the establishment of performance indicators.
8. The Court noted that performance indicators would include, inter alia, quality and response time, in order to ensure best value for money. The Court also underlined that the new contractor will be in charge of procuring new replacements, which should be cost-effective as the contractor is also in charge of other buildings and therefore has a good knowledge of best-practices and can conduct joint procurements.

2. Medium-term needs for capital replacements

9. The Court had the opportunity to present and discuss its five year plan on capital replacements at the International Criminal Court’s Permanent Premises³ during the informal consultations.
10. The Court underscored in particular the necessity of capital replacements to preserve the building value and reliable operability for the years 2018 to 2022. The Court indicated that €2,230,000 would need to be factored in for the five years plan based on the assumption that appropriate regular preventive maintenance is applied and that corrective maintenance will be implemented as necessary.

¹ ICC-ASP/14/Res.5, see in particular annex II.

² ICC-ASP/16/25, para. 2 of the Executive Summary.

³ ICC-ASP/16/26.

11. States were informed that the Committee on Budget and Finance had had the opportunity to review the plan and had recommended the Court to seek a second opinion from the new main contractor.⁴ Delegations concurred with that recommendation.

12. Delegations recalled that the Assembly had decided in 2015 that “no costs for capital replacements shall be factored in for the first ten years, until 2026”⁵ and that should States Parties wish to modify that decision, it would need to be clearly formulated in a resolution.

13. States also outlined the importance of cost transparency and concurred with the recommendation of the Committee on Budget and Finance that the Court summarize the cost elements regarding capital investments, which are disseminated throughout the programme budget, in an overview table.⁶

14. States stressed that this discussion should continue in 2018 during the discussion of the 2019 proposed programme budget. The Court added that capital replacements costs could be included in Major Programme V: Premises of the programme budget.

B. Recommendations

15. The focal point through the Bureau submits the recommendations contained in the appendix to be included in the budget resolution for the consideration of the Assembly.

⁴ ICC-ASP/16/15, para. 235.

⁵ ICC-ASP/14/Res.5, para. 67.

⁶ ICC-ASP/16/15, para. 224.

Appendix

Recommendations to be included in the budget resolution

The Assembly of States Parties,

Recalling the work undertaken by the Oversight Committee on the Total Cost of Ownership;¹

Reiterating the need to ensure sufficient and continuous oversight by the States Parties on the permanent premises in which they have invested significant financial resources;²

1. *Welcomes* the information provided by the Court on Capital replacements³ and on its mechanisms to monitor and control the maintenance costs of its premises;⁴ *welcomes further* the recommendations made by the Committee on Budget and Finance as regards preventive and corrective maintenance costs as well as capital replacements⁵, as well as the recommendations made by the External Auditor on financial reporting and management of the permanent premises project;⁶
2. *Requests* the Court to summarize the maintenance and operating costs of the Court's premises in an overview table in future proposed programme budgets;
3. *Requests* the Court to seek a second opinion regarding capital investments from the incoming main contractor in advance of its seventeenth session, bearing in mind the following factors:
 - (a) Urgency of replacements, by taking into account actual usage;
 - (b) Value for money, in particular whether alternative product brands offer better value for money in terms of reliability, durability, ease of repair, etc.;
 - (c) Pricing assumptions with surveys of most recent market trends;
 - (d) Opportunities from (joint) procurement; and
 - (e) Lessons learned, for instance, from other The Hague based institutions.
4. *Requests further* the Court to present, to the Assembly via the Committee on Budget and Finances and ahead of the seventeenth session of the Assembly, a report on different options for funding long-term maintenance and replacement based on the experience of other international organizations.
5. *Reaffirms* that the Bureau is entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget, or, if necessary, a subcommittee thereof;
6. *Welcomes with appreciation* that several States Parties made artwork donations to the permanent premises.

¹ ICC-ASP/14/Res.5, annex II and ICC-ASP/15/Res.2, para. 35.

² ICC-ASP/14/Res.5, para. 56.

³ ICC-ASP/16/26.

⁴ ICC-ASP/16/25.

⁵ ICC-ASP/16/15, para. 216-235.

⁶ *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part C.1., p. 439, Recommendation 1: "The External Auditor recommends that, at its next session, or as soon as possible in 2017, the Assembly review cost estimates of capital replacements and implement a funding solution which does not jeopardize the prudential level of the working capital fund."